



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-175654

December 28, 1973

Trans Country Van Lines, Inc.
3300 Veterans Highway
Bohemia, Long Island, New York 11717

Attention: Larry Binonfeld, Audit Control

Gentlemen:

We refer to your letters of July 30, 1973, and August 10, 1973, files 21919-20-R-21-773 and 34003-ETC-SOL-873, asking for review of settlements of your claims involving application of the three-year period of limitation provided in 49 U.S.C. 66 for the filing of transportation claims cognizable by this Office.

The July 30 letter pertained to your bill No. 21919, 21920 which was settled under our claim file TK-912956. The August 10 letter pertained to the following bills which were settled under the claim files shown:

Bill No. 34003	TK-951691
Bill No. 32893	TK-954641
Bill No. 32965	TK-954673
Bill No. 33026	TK-954650
Bill No. 33021	TK-954213
Bill No. 32926	TK-955108

Trans Country Van Lines is a common carrier subject to the Interstate Commerce Act, as amended, and its right to payment for transportation of Government property is governed by 49 U.S.C. 66, including the three-year period of limitation provided therein. At the time the shipments in question were transported, the statute read:

Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the

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General Accounting Office, but the right is reserved to the United States Government to deduct the amount of any overpayment by any such carrier from any amount subsequently found to be due such carrier. The term "overcharges" shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board and charges in excess of those applicable thereto under rates, fares, and charges established pursuant to section 22 of this title: Provided, however, That such deductions shall be made within three years (not including any time of war) from the time of payment of bills: Provided further, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years (not including any time of war) from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later. (Sept. 18, 1940, ch. 722, title III § 322, 54 Stat. 955; Aug. 26, 1958, Pub. L. 85-762, § 2, 72 Stat. 860)

The claim on your bill No. 21919, 21920, TK-912956, is illustrative of the other claims and will be used for purposes of discussion. The shipment involved in that claim was delivered September 21, 1966. At that time, a cause of action accrued to Trans Country Van Lines for all of the charges due for the services rendered under the bill of lading contract, Government Bill of Lading No. D-0266331.

Your original bill No. 21919, 21920, dated September 28, 1966, for \$5,988.66, was sent to the Army Finance Center and was paid November 10, 1966. At that time, Trans Country Van Lines' cause of action for its transportation charges was discharged to the extent

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of the payment but there was an undercharge of \$2,712.04 on the shipment as to which a cause of action continued to apply under the terms of the statute. On November 11, 1969, three years after the date of payment of your original bill for the services, the cause of action for recovery of the undercharge, absent any other intervening material fact, would have expired by the terms of the statute.

On April 4, 1968, less than three years after payment of the original bill, this Office caused to be deducted from Trans Country Van Lines' revenues the sum of \$1,828.66 for an alleged overcharge on the shipment. This action was in error and a cause of action accrued to Trans Country Van Lines at that time for recovery of the amount deducted, in addition to the cause of action for the undercharge as to which the statutory three-year period of limitation had not then expired.

On June 15, 1970, we received your supplemental claim for \$3,330.20, under your bill No. 21919, 21920. At that time, the cause of action for recovery of the erroneous deduction was still in being as it had accrued on April 4, 1968, less than three years before the supplemental claim was received here. The cause of action for recovery of the undercharge, however, apparently had become time barred as it had accrued on November 11, 1966, more than three years before your claim was received here. The settlement here of your claim for \$3,330.20 allowed \$1,828.66, the amount of the deduction, and disallowed the balance because of the time bar and because \$883.38 was not due on the merits in any event.

The question for decision, therefore, is whether the deduction of \$1,828.66, on April 4, 1968, was operative to extend the period of limitation on the cause of action for recovery of the undercharge for an additional three years or whether the deduction created only a new cause of action for recovery of the amount deducted without affecting the period of limitation then running on the cause of action for recovery of the undercharge.

In Erie Lackawanna Railway Company v. United States, 439 F. 2d 194 (1971), the United States Court of Claims, construing 49 U.S.C. 16(3), a jurisdictional statute containing language similar to that found in 49 U.S.C. 66, held that a railroad's cause of action for charges for transportation of Government property accrued on the

date of delivery but was extended for a period of three years from the later of three specified events: Payment of charges, refund for overpayment, or deduction made pursuant to 49 U.S.C. 66. The court viewed the occurrence of the later of any of these events as opening the entire account for a period of three years and as permitting suit by either party within that time period for amounts not limited to the amount of the refund or the amount of the deduction.

In T.I.H.E. Freight, Inc. v. United States, however, 302 F. Supp. 573 (1969), the United States District Court for the Northern District of Texas, construing 49 U.S.C. 304a(7), a jurisdictional statute likewise containing language similar to that found in 49 U.S.C. 66, held that a motor carrier's cause of action for recovery of the full amount of its charges continues for a period of three years after date of payment of its charges and that its failure to file an action within those three years precludes recovery for any amounts claimed over and above the amount paid by the Government. The court also held that the motor carrier could recover for amounts improperly deducted by the Government when those deductions had been made less than three years prior to the filing of the suit as it was not until such deductions were made that plaintiff had a cause of action to recover the deductions.

It will be seen that the above decisions, both reached by courts of competent jurisdiction, are diametrically opposed. Furthermore, neither decision has been either repudiated or sustained by a higher court having appellate power of review and thus each decision represents the law as it is applied in the respective jurisdiction.

In construing the time limitation provided in 49 U.S.C. 66 on our authority to settle transportation claims, in the absence of an authoritative decision by the Supreme Court of the United States, we are not necessarily bound by the decisions of the lower courts. Consequently, neither the decision by the United States Court of Claims nor the decision by the United States District Court is necessarily dispositive of the question affecting our jurisdiction and we are entitled to give effect to the rationale of either court depending upon which we find to be the more persuasive.

Statutes of limitation of the kind here involved are jurisdictional, cannot be waived by officers or agents of the United States, and are to be construed according to the restrictions imposed.

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Finn v. United States, 123 U.S. 227 (1887); Munro v. United States, 303 U.S. 36 (1938). We believe the decision by the United States District Court, when applied to the analogous provisions of 49 U.S.C. 66, results in a more strict construction of the statute and one that gives effect to the legislative intention to terminate causes of action for transportation charges within three years after the date of accrual. And we agree with the United States District Court that separate causes of action accrued when the events specified in the statute occurred and that each cause of action terminated three years after the time it accrued.

Under the rationale of the Court of Claims decision, a claim for recovery of transportation charges, or a claim by this Office for recovery of an overcharge, could be prolonged almost indefinitely by the simple expedient of the making of a token refund or deduction, either of which would reopen the entire account and would give the parties an additional three years within which to make further demands against each other unrelated to the amount of the refund or the deduction so made. We do not believe that this result was intended when the statute was enacted and we believe each cause of action arising under the events specified in the statute is subject to a separate period of limitation.

In any event, the accounting officers of the Government long have had the duty of rejecting those claims to which they believe there may be substantial defenses in law or where they doubt their validity. Longwill v. United States, 17 Ct. Cl. 288 (1881); Charles v. United States, 19 Ct. Cl. 326 (1884).

The settlements of your claims by the Transportation and Claims Division were consistent with the construction of the statute set forth above and consequently they are sustained.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States